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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ASIAN AMERICAN  
ENTERTAINMENT  
CORPORATION, LIMITED,

Plaintiff,

v.

LAS VEGAS SANDS, INC.,  
VENETIAN CASINO RESORT,  
LLC, VENETIAN VENTURE  
DEVELOPMENT, LLC,

Defendants.

) Case No. 2:07-cv-00144-JCM-PAL  
)  
) **DEFENDANTS' MOTION FOR**  
) **PRELIMINARY AND**  
) **PERMANENT INJUNCTIONS**  
) **AGAINST PLAINTIFF'S**  
) **LAWSUIT IN MACAU**

**MOTION FOR PRELIMINARY AND PERMANENT  
INJUNCTIONS AGAINST PLAINTIFF'S LAWSUIT IN MACAU**

Defendants Las Vegas Sands, Inc., Venetian Casino Resort, LLC, and Venetian Venture Development, LLC, move to enjoin Plaintiff Asian American Entertainment Corporation, Limited (AAECL), its proxies, and all those acting in concert with it, from prosecuting a lawsuit it has filed in Macau currently styled as *Asian American Entertainment Corporation Limited (AAECL) v. LVS (Nevada) International Holdings, Inc. (formerly the Venetian Venture Development, LLC), Las Vegas Sands, LLC, Venetian Casino Resort, LLC, and Venetian Macao, S.A.*, Process Number CV2-12-0004-CAO (Court of First Instance, Second Civil Court), and to take all steps necessary to withdraw that Macau lawsuit. Moreover, AAECL, its proxies, and all those acting in concert with it should be enjoined from commencing and prosecuting any other lawsuit concerning the same claims and issues. Such an injunction is necessary on the grounds that AAECL submitted the same issues and claims asserted in the Macau lawsuit to the jurisdiction of this Court and, accordingly, its Macau lawsuit (and any other such foreign litigation) contravenes the final judgments and orders of this Court in this action, is

1 against public policies that are reflected in those judgments and orders, is  
2 vexatious and oppressive, and is otherwise inequitable.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

Defendants Las Vegas Sands, Inc., Venetian Casino Resorts, LLC, and Venetian Venture Development, LLC (the "LVS Defendants"), move for preliminary and permanent anti-suit injunctions to prevent Plaintiff Asian American Entertainment Corporation, Limited (AAECL), its proxies, and all those acting in concert with it, from prosecuting a lawsuit that it recently filed in Macau, and any similar litigation that it has filed or will file in the future, in which it purports to re-litigate the same issues and claims against the LVS Defendants that it asserted in this action, and over which it invoked the jurisdiction and judicial process of this Court and the United States Court of Appeals for the Ninth Circuit (Case No. 07-16646).

**PRELIMINARY STATEMENT**

Plaintiff AAECL filed the Complaint in the instant case in this Court more than five years ago. The result of several years of litigation is this Court's dismissal of that Complaint with prejudice because the bulk of AAECL's claims are barred by the statutes of limitations and AAECL abandoned the rest of its lawsuit by "willful[ly] fail[ing] to comply with the court's orders" in a manner that "interfered with the court's ability to hear this case [on remand from the Ninth Circuit], delayed litigation, disrupted the court's timely management of its docket, wasted judicial resources, and threatened the integrity of the court's orders and the orderly administration of justice." 2/11/10 Report of Findings and Recommendation ("2/11/10 Findings") (Doc. 132) ¶ 23, *affirmed by* 4/16/10 Order (Doc. 133); *see also* 8/20/07 Judgment (Doc. 52) (affirmed in part, reversed in part, and remanded).

1 Recently, AAECCL has filed essentially the *same* complaint against the  
 2 *same* defendants in Macau.<sup>1</sup> After burdening the LVS Defendants and this  
 3 Court for several years, AAECCL wants to start over in a foreign tribunal.

4 The LVS Defendants respectfully ask this Court to enjoin AAECCL  
 5 from prosecuting its lawsuit in Macau or any similar litigation that it has  
 6 filed or may file in the future. An injunction is necessary and appropriate to  
 7 safeguard this Court's jurisdiction, to enforce its judgment and orders, to  
 8 promote the public interest in finality and repose, and to protect the LVS  
 9 Defendants from vexatious and unwarranted re-litigation of the issues that  
 10 were already resolved in this action. Moreover, preliminary injunctive  
 11 relief is warranted because the LVS Defendants are already bearing the  
 12 costs and other burdens of re-litigation in Macau.

### 13 PROCEDURAL HISTORY AND BACKGROUND

14 1. *Initial Proceedings.* AAECCL filed its Complaint in this action on  
 15 February 5, 2007. Ex. 2 ("Nev. Compl.").<sup>2</sup> In that Complaint, it asserted "an  
 16 action for money damages arising from an agreement between [AAECCL]  
 17 and defendant Venetian Venture Development, LLC." *Id.* ¶ 3. In particular,  
 18 AAECCL alleged that it and Venetian Venture Development had executed a  
 19 letter of intent on October 18, 2001, in which they outlined a joint effort to  
 20 obtain a gaming license in Macau and to develop and operate a casino,  
 21 hotel, and related facilities there. Ex. 3 ("Letter of Intent") 1. Most of the  
 22 Letter of Intent's provisions were nonbinding proposals that did not impose  
 23 "any obligation or liability on the parties"; the few provisions reflecting the

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24 <sup>1</sup> AAECCL's new complaint adds an affiliate of the defendants named in this  
 25 action. That affiliate's interests coincide with the interests of the defendants  
 26 who are named in both actions, and so the parties are considered to be the  
 27 same for purposes of issuing an anti-suit injunction. *See infra* p. 11.

28 <sup>2</sup> Exhibit numbers refer to the exhibits to the Declaration of Kathryn S. Zecca  
 In Support Of Defendants' Motion for Preliminary and Permanent  
 Injunctions Against Plaintiff's Macau Lawsuit, filed along with this Motion.

1 parties' commitments to each other were set to expire (after an initial  
 2 written extension) on January 15, 2002. *Id.* ¶¶ 10, 12, 13(G) and p. 7; Ex. 4  
 3 (11/15/01 Amendment) ¶ 1. The Complaint also contended that on  
 4 January 15, 2002, the parties *orally* agreed to extend the Letter of Intent's  
 5 term to February 15, 2002. Ex. 2 (Nev. Compl.) ¶ 19. In any event, one or  
 6 more of the Defendants terminated the Letter of Intent on or about February  
 7 6, 2002. *Id.* ¶ 42.

8 The crux of AAECCL's claims in the Nevada Complaint was its  
 9 allegation that the LVS Defendants secretly began working with another  
 10 entity—Galaxy Casino Limited ("Galaxy")—to secure one of the same  
 11 gaming licenses and related concessions in Macau, and that by doing so the  
 12 Defendants breached exclusivity and confidentiality provisions of their  
 13 Letter of Intent with AAECCL, as well as certain fiduciary duties allegedly  
 14 arising out of the relationship contemplated in that document. *See id.* ¶¶  
 15 52–58 (Count I), 66–73 (Count III).<sup>3</sup>

16 Defendants moved to dismiss AAECCL's Nevada Complaint on the  
 17 ground that its claims were time-barred by Nevada's four-year statute of  
 18 limitations for breaches of oral (and partly oral) contracts, and Nevada's  
 19 three-year statute of limitations for breaches of fiduciary duties. Docs. 29,  
 20 40. AAECCL opposed dismissal and contended that Macau's purportedly  
 21 lengthier limitations periods applied to its claims. Doc. 35. AAECCL also  
 22 argued, in the alternative, that under Nevada's statutes of limitations its  
 23 contract claim was subject to a six-year limitations period for actions on

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24  
 25 <sup>3</sup> The Nevada Complaint also asserted a breach of fiduciary duty claim  
 26 against two employees of the LVS Defendants, William P. Weidner and  
 27 David Friedman. Ex. 2 (Nev. Compl.) ¶¶ 59–65 (Count II). The Ninth  
 28 Circuit affirmed this Court's dismissal of the cause of action against Messrs.  
 Weidner and Friedman, and so they are no longer defendants in this action.  
 Moreover, Mr. Weidner and Mr. Friedman are neither currently employed  
 by any LVS entity nor named as a defendant in AAECCL's Macau Complaint.

1 written contracts, rather than the four-year limitations period for actions on  
2 oral contracts. *Id.* This Court dismissed the Nevada Complaint without  
3 prejudice (Docs. 47–48), and then with prejudice (Docs. 51–52) after AAECCL  
4 provided notice that it would not file an amended complaint (Doc. 49).

5 2. *Ninth Circuit Appeal.* AAECCL appealed. *See* Doc. 53. It  
6 reiterated its primary legal argument that Macau's statutes of limitations  
7 applied to its claims, and its alternative argument that its contract claim  
8 should survive under Nevada's six-year limitations period. AAECCL also  
9 asked the Ninth Circuit to reassign this case, on remand, to a different  
10 District Judge "[i]n light of the district court's premature and unreasoned  
11 decision in this case." Appellant's Opening Br., No. 07-16646, 2007 WL  
12 4856760 (9th Cir. Dec. 21, 2007).

13 The Ninth Circuit substantially affirmed. *See Asian American*  
14 *Entertainment Corp., Ltd. v. Las Vegas Sands, Inc.*, 324 F. App'x 567 (2009). It  
15 agreed that Nevada's statutes of limitations governed Plaintiff's claims. *Id.*  
16 at 568. It therefore concluded that AAECCL's fiduciary-duty claims (Counts  
17 II and III) were time-barred. *Id.* at 569. With regard to AAECCL's contract  
18 claim (Count I), the Ninth Circuit reversed *only* to the extent that Nevada's  
19 six-year limitations period should apply to the claim "insofar as it is  
20 premised on pre-extension conduct" (*i.e.*, conduct prior to the alleged  
21 January 15, 2002, oral extension). *Id.* The Ninth Circuit denied AAECCL's  
22 request for reassignment of the case on remand. *Id.* Its mandate issued on  
23 May 6, 2009. Doc. 64.

24 3. *Proceedings on Remand.* On June 19, 2009, the LVS Defendants  
25 filed a motion to dismiss the remaining contract claim, or for a more  
26 definite statement in light of the Ninth Circuit's ruling. This Court denied  
27 that motion, and the LVS Defendants answered the Complaint. Docs. 97,  
28 101. Around the same time, Magistrate Judge Leen approved a proposed

1 discovery plan and scheduling order submitted by the parties. Docs. 79, 82,  
2 84, 86. But while all of these proceedings were underway, AAECCL's counsel  
3 informed its client that it would have to withdraw from this action if certain  
4 "financial obligations" related to the prosecution of this case were not be  
5 resolved. *See* 2/11/10 Findings (Doc. 132) ¶¶ 4, 19. Ultimately, those issues  
6 were not resolved, and AAECCL's counsel informed its clients that it would  
7 withdraw from the action, "urged Plaintiff to find substitute counsel," and  
8 moved to withdraw 15 days later. *Id.* ¶¶ 3, 5.

9 The Court granted AAECCL's counsel's Motion to Withdraw, and  
10 ordered AAECCL to retain new counsel within two weeks—warning that  
11 "[f]ailure to comply with [that] Order will result in a recommendation to  
12 the District Judge that this matter be dismissed for Plaintiff's failure to  
13 prosecute." *Id.* ¶¶ 9–11 (quoting 1/13/10 Order (Doc. 123)). Despite  
14 additional hearings and multiple continuances, AAECCL never finalized  
15 arrangements to retain new counsel to prosecute what remained of this  
16 action. *See id.* ¶¶ 12–18. Magistrate Judge Leen therefore recommended  
17 that the case be dismissed with prejudice based on her finding that AAECCL  
18 "did not retain counsel who were authorized to appear in court as ordered,"  
19 "failed to meet promises and assurances made to prior counsel and  
20 prospective counsel on multiple occasions," and "willfully refused to  
21 comply with multiple court orders." *Id.* ¶¶ 21–23. Magistrate Judge Leen  
22 further found that AAECCL's "willful failure to comply with the court's  
23 orders has interfered with the court's ability to hear this case, delayed  
24 litigation, disrupted the court's timely management of its docket, wasted  
25 judicial resources, and threatened the integrity of the court's orders and the  
26 orderly administration of justice." *Id.* ¶ 23. This Court affirmed that report  
27 and recommendation, and dismissed this action "for failure to prosecute  
28

1 this action and failure to comply with the court's order that [AAECL] retain  
2 substitute counsel." 4/16/10 Order (Doc. 133).

3 4. *Macau Complaint*. Nearly two years after this Court's dismissal  
4 of the last of the Nevada Complaint, and nearly five years after AAECL  
5 filed this action, AAECL filed suit against Las Vegas Sands, LLC (successor  
6 to defendant Las Vegas Sands, Inc.), LVS (Nevada) International Holdings,  
7 Inc. (successor to defendant Venetian Venture Development, LLC),  
8 Venetian Casino Resort, LLC, and Venetian Macau, S.A., in Macau's Court  
9 of First Instance. *See* Ex. 1 (Common Claim, CV2-12-0004-CAO) ("Macau  
10 Compl.") (translated from Portuguese); *see also* Ex. 6 (original Macau  
11 Complaint in Portuguese).

12 The Macau Complaint's principal allegation, like that of its Nevada  
13 predecessor, is that "the Defendants breached all obligations contained in  
14 the [Letter of Intent, as amended]" (*id.* ¶ 159), including its confidentiality  
15 clause and provisions about information-sharing with third parties (*id.* ¶¶  
16 157–158). *See also id.* ¶¶ 15–30, 35–36 (alleging facts concerning the Letter of  
17 Intent). AAECL purports to support that primary allegation with a series of  
18 contentions about the parties' participation in Macau's gaming-license  
19 tender-submission process that are nearly identical to its allegations in the  
20 Nevada Complaint. For example, both Complaints describe the LVS  
21 Defendants' cooperation in AAECL's December 2001 tender submission,<sup>4</sup>  
22 their participation in AAECL's January 2002 presentations in support of that  
23 tender submission,<sup>5</sup> LVS's discussions with Galaxy leading up to Galaxy's  
24 February 2002 tender submission and the termination of the AAECL-LVS  
25  
26

27 <sup>4</sup> Compare Ex. 1 (Macau Compl.) ¶¶ 37–45, with Ex. 2 (Nev. Compl.) ¶ 21.

28 <sup>5</sup> Compare Ex. 1 (Macau Compl.) ¶¶ 55–59, 63–64, with Ex. 2 (Nev. Compl.)  
¶¶ 24–25.

Letter of Intent,<sup>6</sup> and the award of a gaming license to Galaxy and not to AAECCL.<sup>7</sup> Finally, the Macau and Nevada Complaints assert the same source for AAECCL's damages: the LVS Defendants' profits from their gaming business in Macau.<sup>8</sup>

## ARGUMENT

This Court should preliminarily and permanently enjoin AAECCL from continuing to pursue its extraordinary re-litigation of claims that this Court has already resolved with prejudice. AAECCL cannot be permitted to burden this Court and the LVS Defendants with three years of litigation in this District—including an appeal to the Ninth Circuit—simply as a prelude to restarting the lawsuit in another forum. This Court's equitable powers undoubtedly include the "ability to enter an anti-suit injunction . . . to restrain a party subject to its jurisdiction from proceeding in foreign court in circumstances that are unjust." *E. & J. Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984, 989 (9th Cir. 2006); *see also Seattle Totems Hockey Club, Inc. v. National Hockey League*, 652 F.2d 852, 855 (9th Cir. 1981). In particular, the Ninth Circuit has held, "[f]oreign litigation may be enjoined" when [a] the "parties and issues are the same" such that "the first action is dispositive of the action to be enjoined," [b] "the impact on comity is tolerable," and [c] any one of four factors are present: the foreign litigation would "(1) frustrate a policy of the forum issuing the injunction; (2) be vexatious or oppressive; (3) threaten the issuing court's *in rem* or *quasi in rem* jurisdiction; or (4) where the proceedings prejudice other equitable considerations." *Gallo*, 446 F.3d at 990–91 (quoting *Seattle Totems*, 652 F.2d at 855 and *Sun*

<sup>6</sup> Compare Ex. 1 (Macau Compl.) ¶¶ 62, 87–108, with Ex. 2 (Nev. Compl.) ¶¶ 24, 33–42.

<sup>7</sup> Compare Ex. 1 (Macau Compl.) ¶ 109, with Ex. 2 (Nev. Compl.) ¶¶ 45–47.

<sup>8</sup> Compare Ex. 1 (Macau Compl.) ¶¶ 127–41, with Ex. 2 (Nev. Compl.) ¶¶ 48–51 & p. 25.

1 *World, Inc. v. Lizarazu*, 804 F. Supp. 1264, 1267 (E.D. Cal. 1992)); *see also*  
 2 *Applied Med. Distrib. Corp. v. Surgical Co. BV*, 587 F.3d 909, 913 (9th Cir.  
 3 2009). An anti-suit injunction binds the party—in this case, AAECCL—and  
 4 not the foreign court. *Gallo*, 446 F.3d at 989. Rule 65 of the Federal Rules of  
 5 Civil Procedure provides the Court with the authority to effectuate its order  
 6 by likewise binding AAECCL's proxies, and others acting in concert with it,  
 7 from pursuing the Macau lawsuit on AAECCL's behalf. *See, e.g., Motorola*  
 8 *Credit Corp. v. Uzan*, No. 02-Civ-666 (JSR), 2003 WL 56998, at \*1, \*3 & n.2  
 9 (S.D.N.Y. Jan. 7, 2003) (enjoining the "defendants, their proxies, and all  
 10 others in concert with them" from pursuing certain foreign proceedings).

11 In this case, the circumstances undoubtedly satisfy the *Gallo* standard.  
 12 The two Complaints' defendant rosters are nearly identical; the Macau  
 13 Complaint merely adds a fourth, affiliated entity whose interests (and  
 14 liability) perfectly coincide with the others. Moreover, AAECCL's Macau  
 15 Complaint is nearly identical to—and is plainly the functional equivalent  
 16 of—its Nevada Complaint. And although the presence of *one* equitable  
 17 factor favoring injunctive relief would suffice, *three* are present: the Macau  
 18 litigation frustrates the policies of this District in enforcing the finality of its  
 19 judgments and the statutes of limitations, it represents vexatious and  
 20 oppressive re-litigation of duplicative claims, and it exacerbates the  
 21 inequities resulting from AAECCL's willful abandonment of its litigation in  
 22 this District in defiance of this Court's lawful orders. Finally, an anti-suit  
 23 injunction would have no effect on comity because it will enforce the  
 24 jurisdiction of the Court in which AAECCL *voluntarily chose* to litigate its  
 25 claims about a private contract and a corresponding relationship between  
 26 private parties.

27 Finally, these circumstances warrant preliminary relief in anticipation  
 28 of a permanent injunction. The LVS Defendants are substantially likely to

demonstrate that the *Gallo* standard has been satisfied in this case, and *Gallo* held that such a showing is sufficient, in and of itself, to warrant a preliminary anti-suit injunction. But what is more, interim relief is necessary to relieve the LVS Defendants of the considerable burdens they are already facing in the Macau litigation.

**I. This Nevada Action Is Dispositive of AAECCL's Macau Lawsuit Because It Implicates the Same Parties and Issues**

In this Circuit, "the first step in determining whether an anti-suit injunction is appropriate is to determine 'whether or not the parties and the issues are the same, and whether or not the first action is dispositive of the action to be enjoined.'" *Gallo*, 446 F.3d at 991 (quoting *Sun World*, 804 F. Supp. at 1267).

**A. The Parties Are The Same**

AAECCL is the only plaintiff in both the Nevada and Macau actions. Compare Ex. 2 (Nevada Compl.) at ¶¶ 3–4 with Ex. 1 (Macau Compl.) at 1. The three remaining defendants in this action are three of the four named defendants in the Macau action. Nevada Defendant Las Vegas Sands, Inc., is named in the Macau Complaint as Las Vegas Sands LLC. Compare Ex. 2 (Nev. Compl.) ¶ 5 with Ex. 1 (Macau Compl.) at 1.<sup>9</sup> Nevada Defendant Venetian Casino Resort, LLC, is also named in the Macau Complaint. Compare Ex. 2 (Nev. Compl.) ¶ 6 with Ex. 1 (Macau Compl.) at 2. And Nevada Defendant Venetian Venture Development, LLC, is named in the Macau Complaint by its successor name, LVS (Nevada) International Holdings, Inc. Compare Ex. 2 (Nev. Compl.) ¶ 7 with Ex. 1 (Macau Compl.) at 1.

The only defendant named in the Macau Complaint that was not named in the Nevada Complaint is Venetian Macau, S.A., an affiliate and

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<sup>9</sup> See also Ex. 1 (Macau Compl.) ¶ 9 (Las Vegas Sands, LLC, was known as Las Vegas Sands, Inc., during the relevant period).

1 subsidiary of the LVS Defendants established after the events alleged in the  
 2 Complaint and against whom there is no conceivable theory of liability. But  
 3 "[p]erfect identity of parties is not required for an anti-suit injunction.  
 4 Rather, it suffices that the parties be affiliated in such a way that their  
 5 interests coincide." *Zynga, Inc. v. Vostu USA, Inc.*, 816 F. Supp. 2d 824, 828  
 6 (N.D. Cal. 2011) (citing *Int'l Equity Invs., Inc. v. Opportunity Equity Fund*  
 7 *Partners*, 441 F. Supp. 2d 552, 562 (S.D.N.Y. 2006) ("Where parties to the two  
 8 actions are affiliated or substantially similar, such that their interests are  
 9 represented by one another, courts have found the [identity-of-parties]  
 10 requirement is met.")). Likewise, parties to two actions are considered to be  
 11 the same for the purpose of issuing an anti-suit injunction if a party named  
 12 in one action "controls" the party named in the other action. *See Int'l Equity*  
 13 *Invs.*, 441 F. Supp. 2d at 562. Here, Venetian Macau, S.A., is a subsidiary of  
 14 the other defendants, and its interests in the Macau litigation coincide  
 15 perfectly with the interests the LVS Defendants advanced successfully in  
 16 the Nevada litigation. In fact, Venetian Macau, S.A., was not established  
 17 until June 2002<sup>10</sup>—months *after* the LVS Defendants' alleged misconduct  
 18 during the tender-submission process—and it appears to have been added  
 19 to the Macau Complaint only to describe the combined entities' gaming-  
 20 business profits after being awarded the right to operate casinos in Macau.  
 21 *See, e.g.*, Ex. 1 (Macau Compl.) ¶¶ 121–129.

## 22 B. The Issues Are the Same

23 The Nevada and Macau litigations unquestionably raise the same  
 24 issues concerning the parties' 2001–2002 relationship relating to the tender-  
 25 submission process for seeking a gaming license and related concessions in  
 26 Macau. "In cases like this where the parties are the same, whether the

27 <sup>10</sup> *See* Ex. 5 (Sands China Ltd. Global Offering (Nov. 16, 2009)) pp. 21, I-60  
 28 (referring to Venetian Macau, S.A., by its English-language name, Venetian  
 Macau Limited (VML)).

1 issues are the same and the first action dispositive of the action to be  
2 enjoined are interrelated requirements" because "issues are functionally the  
3 same if one action is dispositive of the other." *Applied Med. Distrib.*, 587 F.3d  
4 at 915. "[T]he Ninth Circuit does not require foreign claims to be identical  
5 in form to the local claims" (*id.* at 918), and so issues are considered to be the  
6 same when a "functional inquiry" (*id.* at 915) reveals that "the issues before  
7 the court" in the foreign action are the same ones "before the court" in the  
8 domestic action (*Gallo*, 446 F.3d at 991).

9 The result of that "functional inquiry" is not in doubt here. The Macau  
10 Complaint is premised on a paragraph-by-paragraph recitation of the same  
11 Letter of Intent that was at the heart of the Nevada Complaint, and similar  
12 allegations concerning its written amendment, alleged oral amendment,  
13 and termination by the LVS Defendants. *See* Ex. 1 (Macau Compl.) ¶¶ 15–  
14 30, 33–35, 61, 73–80, 82–83, 100–108. The primary claim for damages is one  
15 and the same: that the LVS Defendants secretly abandoned a contractual  
16 joint venture and tender submission with AAECCL in order to join a  
17 competing tender submission by Galaxy, and that by doing so they violated  
18 various contractual obligations and other duties they held to AAECCL. *See*,  
19 *e.g.*, *id.* ¶¶ 62, 65–66, 68, 84–99. Those claims and issues have been resolved  
20 against AAECCL with prejudice in this Court's dispositive final judgments  
21 and orders. *See* 8/20/07 Judgment (Doc. 52) (affirmed in part, reversed in  
22 part, and remanded); 4/16/10 Order (Doc. 133); *see also* Fed. R. Civ. P. 41(b)  
23 (absent an express statement to the contrary, involuntary dismissal for  
24 failure to prosecute "operates as an adjudication on the merits").

25 In short, the translation of the Nevada Complaint's allegations into  
26 Macau's official Portuguese cannot obscure the fact that the two Complaints  
27 are nearly identical: both assert claims for monetary damages and other  
28 relief arising out of the same Letter of Intent, alleged joint venture, and

tender-submission process—cataloging the same alleged misdeeds on Defendants' part that supposedly caused AAECCL to suffer losses when it failed to obtain a gaming license in Macau.

## II. Equity Demands an Injunction Against AAECCL's Prosecution of Its Macau Lawsuit

Where—as here—domestic and foreign litigation involves the same issues and parties, equity favors an anti-suit injunction when foreign litigation would "(1) frustrate a policy of the forum issuing the injunction; (2) be vexatious or oppressive; (3) threaten the issuing court's *in rem* or *quasi in rem* jurisdiction; or (4) where the proceedings prejudice other equitable considerations." *Gallo*, 446 F.3d at 990 (quoting *Seattle Totems*, 652 F.3d at 855). The factors are "disjunctive" such that "if *any* of the four elements is present, an anti-suit injunction may be proper." *Id.* (emphasis added). The equities overwhelmingly call for an injunction in this case—*three* of the four *Gallo* factors are demonstrably present.<sup>11</sup>

1. AAECCL's prosecution of the Macau Complaint will frustrate at least two policies of this forum. *See Gallo*, 446 F.3d at 990. For one thing, AAECCL's attempt at getting Macau's courts to weigh in on issues this Court already resolved by final judgment "is little more than a thinly veiled attempt to take a second bite at the apple." *Oracle Am., Inc. v. Myriad Group AG*, No. C 10-05604, 2012 WL 146364, at \*5–6 (N.D. Cal. Jan. 17, 2012) (granting a preliminary anti-suit injunction). Allowing AAECCL to proceed on this track would "frustrate and contravene the policy against . . . inconsistent judgments [and] forum shopping." *Id.* at \*5. As the Ninth Circuit has emphasized, "courts 'have a duty to protect their legitimately conferred jurisdiction to the extent necessary to provide full justice to

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<sup>11</sup> Only the consideration of threats to the forum's *in rem* or *quasi in rem* jurisdiction are not implicated by the circumstances of this case. *See Gallo*, 446 F.3d at 990.

litigants. Thus, when the action of a litigant in another forum threatens to paralyze the jurisdiction of the court, the court may consider the effectiveness and propriety of issuing an [anti-suit] injunction." *Gallo*, 446 F.3d at 995 (quoting *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 927 (D.C. Cir. 1984)) (alteration in original). Any conceivable resolution of the Macau proceedings in AAECCL's favor is virtually guaranteed to "result in inconsistent rulings" between that tribunal and this one. *Seattle Totems*, 652 F.2d at 856; *see also id.* (approving, as part of the "equitable balance," a court's consideration of its "'interest . . . in promoting the efficient administration of justice'").

In this respect, this case is like *Applied Medical Distribution*, where a party's "subsequent filing" of foreign litigation over the same issues and against the same parties "raise[d] the concern that it [was] attempting to evade the rightful authority of the district court." 587 F.3d at 921. In that case, the Ninth Circuit emphasized that "a substantial portion" of the monetary damages that a party sought in its foreign lawsuit arose out of a claim for damages that "the district court already held [the party] was not entitled to." *Id.* Indeed, the Ninth Circuit chided the two-forum litigant for "not so much as acknowledg[ing] that allowing it to proceed in its [foreign] action would effectively abrogate the United States District Court's judgment that [the party was] not entitled to [its claimed damages]." *Id.*

So too, here. AAECCL is seeking the same monetary damages, based on the same conduct, and arising out of the same contractual and business relationships, that gave rise to its unsuccessful action in this Court. This Court has already denied those claims in final judgments entered against AAECCL *with prejudice*. *See* 8/20/07 Judgment (Doc. 52) (affirmed in part, reversed in part, and remanded); 4/16/10 Order (Doc. 133); *see also* Fed. R. Civ. P. 41(b). "When the [anti-suit] injunction is requested after a previous

1 judgment on the merits, there is little interference with the rule favoring  
2 parallel proceedings" and "a court may freely protect the integrity of its  
3 judgments by preventing their evasion through vexatious or oppressive  
4 relitigation." *Laker Airways*, 731 F.2d at 928. For that reason, public policy  
5 demands that this Court's adjudication of AAECCL's claims mark the end of  
6 the road, not the beginning of a new one.

7 For another thing, re-litigation of the adjudicated claims in Macau is  
8 an obvious end-run around the statutes of limitations enforced by this  
9 Court's dismissal of AAECCL's Nevada Complaint, and the Ninth Circuit's  
10 affirmance of that judgment in substantial part. Both courts held that  
11 Nevada's limitations periods apply to this litigation, and that AAECCL's  
12 fiduciary-duty claims and the bulk of its contract claim are time-barred.  
13 Defendants have justifiably relied on the finality of those judgments and the  
14 repose provided by the applicable limitations periods.

15 2. Restarting this litigation and resurrecting old claims in a foreign  
16 forum is also vexatious and oppressive. AAECCL *chose* to litigate its claims  
17 in this District—it asserted this Court's jurisdiction to resolve its dispute  
18 with the LVS Defendants, and then reiterated that jurisdictional invocation  
19 when it took an appeal to the Ninth Circuit. For AAECCL now to re-litigate  
20 the same issues, against the same parties, in Macau nearly *five years* after  
21 filing its Nevada Complaint (and more than *ten years* after the relevant  
22 events) is plainly vexatious and oppressive to the LVS Defendants. *See*  
23 *Gallo*, 446 F.3d at 990; *see also Seattle Totems*, 652 F.2d at 853 (noting a 27-  
24 month period between the filing of a domestic action and the filing of a  
25 foreign one).

26 Where—as here—the "validity" and enforceability of particular  
27 private contracts are "a central issue[s]" in both the foreign and domestic  
28 litigations, the duplicative litigation of those issues "is likely to result in

unnecessary delay and substantial inconvenience and expense to the parties and witnesses." *Seattle Totems*, 652 F.2d at 856. Other courts have recognized, for example, that when parties to a domestic lawsuit "ha[ve] already defended [a plaintiff's] claims on the same transactions and prevailed in final judgments . . . it would be an inequitable hardship to require [them] to devote the time and expense to defend itself against the same claims [abroad]." *Commercializadora Portimex S.A. de C.V. v. Zen-Noh Grain Corp.*, 373 F. Supp. 2d 645, 649 (E.D. La. 2005); *see also Home Healthcare Affiliates of Miss., Inc. v. North Am. Indem. N.V.*, No. 1:01-CV-489-D-A, 2003 WL 22244382, at \*3 (N.D. Miss. Aug. 7, 2003) (similar).

3. Other "equitable considerations" also militate in favor of an injunction against prosecution of the Macau lawsuit. *See Gallo*, 446 F.3d at 990. In particular, due consideration must be given to AAECCL's defiance of this Court's orders and its other tactics of delay and obfuscation during its prosecution of its action in this District. After unsuccessfully litigating its fiduciary-duty claims and the bulk of its contract claim before this Court and the Ninth Circuit, AAECCL simply walked away from its remaining claims through a pattern of misdirection and willful disregard of the judicial process. Over a two-month period in late 2008 and early 2009, AAECCL ignored its obligations, and orders of this Court, that it retain counsel to continue the prosecution of its claim. Multiple hearings were held and orders were issued before Magistrate Judge Leen found that AAECCL had "willful[ly] fail[ed] to comply with the court's orders" in a manner that "interfered with the court's ability to hear this case, delayed litigation, disrupted the court's timely management of its docket, wasted judicial resources, and threatened the integrity of the court's orders and the orderly administration of justice." 2/11/10 Findings (Doc. 132) ¶ 23, *affirmed by* 4/16/10 Order (Doc. 133). This pattern of disrespect for this

1 Court demonstrates that AAECCL has already involved the LVS Defendants  
 2 in "messy [and] protracted" litigation, placing this among the "paradigmatic  
 3 case[s]" in which the circumstances abundantly justify an anti-suit  
 4 injunction. *Gallo*, 446 F.3d at 995.

5 What is more, AAECCL apparently still faces the very same financial  
 6 constraints that likely led to its failure to prosecute its action in this District,  
 7 and so there is every reason to believe that its prosecution of the Macau  
 8 lawsuit will be similarly stymied by delay and dereliction. In fact, the  
 9 Macau Complaint states that a Macanese court dissolved AAECCL on  
 10 November 3, 2005, and that it is "currently in [the] process of liquidation."  
 11 Ex. 1 (Macau Compl.) ¶¶ 162–163. AAECCL further admits that it "is not  
 12 exercising any business activity," "[i]t has no assets or income," it does not  
 13 have "a bank account," and does not "have sufficient financial means to pay,  
 14 even in part, the costs (court fees and charges)" of its Macau lawsuit. *Id.* ¶¶  
 15 166–170.<sup>12</sup> Defendants should not—*once again*—be put to the considerable  
 16 expense and burden of litigating decade-old claims against a corporate  
 17 plaintiff that plainly lacks the means to fairly and fully prosecute its claims.

### 18 **III. An Injunction Will Not Have an Intolerable Impact on Comity**

19 Any impact on comity from issuance of an anti-suit injunction in this  
 20 case is undoubtedly tolerable—indeed, it is hard to fathom any impact on  
 21 comity at all. For one thing, "[c]omity is not required where the [foreign]  
 22 action was filed after the U.S. action for the sole purpose of interfering with  
 23 the U.S. suit." *Dependable Highway Express v. Navigators Ins. Co.*, 498 F.3d  
 24 1059, 1069 (9th Cir. 2007). International comity simply is not implicated

25 <sup>12</sup> And yet the Macau litigation exists and continues. The Macau Complaint  
 26 provides evidence that this is, at least in part, the result of directions from  
 27 individuals affiliated with AAECCL. See Ex. 1 (Macau Compl.) 45 ("Proxy").  
 28 Under the circumstances, this Court's injunction should apply to AAECCL's  
 proxies and others acting in concert with it to pursue the litigation. See  
*supra* p. 10.

1 where a litigant is making an end-run around its own, first-choice forum.  
 2 "[W]here one court has already reached a judgment—on the same issues,  
 3 involving the same parties—considerations of comity have diminished  
 4 force." *Paramedics Electromedicina Comercial, LTDA v. GE Medical Sys. Info.*  
 5 *Techs., Inc.*, 369 F.3d 645, 655 (2d Cir. 2004); *see also Laker Airways*, 731 F.2d at  
 6 939 (comity is ordinarily implicated by "concurrent proceedings based on the  
 7 same transitory claim, *at least until a judgment is reached in one action*"  
 8 (emphasis added)). Just like cases involving forum-selection clauses, a  
 9 dispute does "not implicate comity at all" where the foreign litigant had  
 10 originally "agreed to litigate [its] dispute[]" in the domestic forum by  
 11 choosing to file suit there and litigating that dispute to final judgment. *Id.*  
 12 The Ninth Circuit has squarely rejected that there are any comity concerns  
 13 in cases—like this one—where a party resorts to a foreign tribunal only *after*  
 14 having its claims resolved against it in a domestic court. *See Applied Med.*  
 15 *Distrib.*, 587 F.3d at 921.

16 For another thing, the Ninth Circuit has twice held that "where there  
 17 is 'no public international issue raised,' a foreign government is not  
 18 involved in the litigation, and the litigation involves private parties  
 19 concerning disputes arising out of a contract," there is no intolerable impact  
 20 on comity. *Applied Med. Distrib.*, 587 F.3d at 921; *see also Gallo*, 446 F.3d at  
 21 994. In this case, like in *Gallo*, the first and third of these considerations  
 22 merge—no "public international issue is raised in this case" *because* AAECCL  
 23 is merely "a private party in a contractual dispute with [other] private  
 24 part[ies]." *Gallo*, 446 F.3d at 994. Where the local action "deals with  
 25 enforcing a contract and giving effect to substantive rights," the case "in no  
 26 way breaches norms of comity." *Id.*

27 Finally, there is no indication that the government of Macau is  
 28 involved in this litigation. *See Gallo*, 446 F.3d at 994. The Macanese

government did not intervene in the litigation in this Court, nor did it file any brief or other document on appeal to the Ninth Circuit. To the extent Macau has *any* interest in this litigation, there is no reason to doubt that such an interest can be "vindicated by other fora applying [Macanese] law where appropriate." *Applied Med. Distrib.*, 587 F.3d at 920.<sup>13</sup> At most, any effect on comity that could be teased out of these circumstances is negligible, and certainly tolerable.

#### IV. A Preliminary Injunction Should Issue Under the Circumstances

In *Gallo*, the Ninth Circuit addressed when a court should issue a preliminary anti-suit injunction, concluding that "[t]he suitability of an anti-suit injunction involves different considerations from the suitability of other preliminary injunctions." 446 F.3d at 990. In particular, the court held that a court "only need address whether [the injunction seeker] showed a significant likelihood of success on the merits" where the "merits" is a demonstration "that the factors specific to an anti-suit injunction weigh in favor of granting [the] injunction." *Id.* at 990–91 (quoting *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 364 n.19 (5th Cir. 2003)); *see also id.* at 991 (a movant "need only demonstrate that the factors specific to an anti-suit injunction weigh in favor of granting the injunction"). For all of the reasons addressed above, those factors overwhelmingly favor a *permanent* anti-suit injunction, and so the LVS Defendants accordingly have shown a "significant likelihood of success on the merits" sufficient to justify a *preliminary* anti-suit injunction under *Gallo*.

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<sup>13</sup> The addition to the Macau Complaint of a Macanese defendant not named in the Nevada Action—Venetian Macau, S.A.—seems to be a thinly veiled effort to bolster a nexus to Macau's courts given that such an entity did not even exist at the time of the events alleged in the new complaint. *See supra* pp. 11-12 & n. 10.

1 What is more, even though a demonstration of irreparable harm or  
2 hardship is not required by *Gallo*'s modified preliminary-injunction  
3 standard, the Macau lawsuit is active and ongoing, and so the LVS  
4 Defendants are already incurring the costs and other burdens of defending  
5 against that vexatious and duplicative litigation. *See Gallo*, 446 F.3d at 990  
6 (noting that the "traditional" preliminary-injunction standard asks whether  
7 there is "'the possibility of irreparable injury'" or if "'the balance of  
8 hardships tips sharply in [movant's] favor'"). As explained by the LVS  
9 Defendants' counsel in Macau, work must begin immediately (at  
10 considerable expense) on a substantial response to AAECCL's Macau  
11 Complaint that is due in less than three months—at which time the LVS  
12 Defendants must pay a court fee of nearly \$200,000. See Declaration of Luís  
13 Cavaleiro de Ferreira ¶¶ 5–7. Preliminary relief is necessary to preserve the  
14 status quo and ensure that the LVS Defendants are left unperturbed by the  
15 AAECCL's prosecution of the Macau litigation while this Court decides  
16 whether such prosecution should be permanently enjoined.

### 17 CONCLUSION

18 Defendants respectfully request that this Court preliminarily and  
19 permanently enjoin AAECCL, its proxies, and all those acting in concert with  
20 it, from prosecuting its duplicative, vexatious, and oppressive lawsuit in  
21 Macau, and from commencing or prosecuting any other lawsuit on the  
22 same claims and issues, on the grounds that such foreign litigation  
23 undermines this Court's jurisdiction, judgment, and orders in a nearly five-  
24 year-old action that AAECCL filed and litigated in this District involving the  
25 same parties and concerning the same issues.

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b) and Section IV of District of Nevada Electronic Filing Procedures, I certify that I am an employee of MORRIS LAW GROUP, and that **DEFENDANTS' MOTION FOR PRELIMINARY AND PERMANENT INJUNCTIONS AGAINST PLAINTIFF'S LAWSUIT IN MACAU** were served via electronic service. I have also served Plaintiff Asian American Entertainment Corporation, Limited (AAECL), by the following means:

(1) By FedEx international priority delivery to AAECL's "head office" as stated on page 1 of AAECL's claim filed in Macau (process number CV2-12-0004-CAO):

Asian American Entertainment Corporation Limited  
Alameda Dr. Carlos de Assumpção, no. 180  
Tong Nam Ah Central Comércio  
17th Floor H and I  
Macao

(2) By FedEx international priority delivery to AAECL's "legal representative" in Macau, as stated in its claim filed in Macau (process number CV2-12-0004-CAO):

Mr. Jorge Menezes  
Avenida da Praia Grande, Nos. 730-804  
Edif. China Plaza, 7th Floor G  
Macao

(3) By FedEx overnight delivery to AAECL's former counsel in this action at the following addresses:

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Joel L. Wohlgemuth  
Adrienne L. Barnett  
Norman Wohlgemuth Chandler & Dowdell  
2900 Mid-Continent Tower  
401 South Boston Ave.  
Tulsa, Oklahoma 74103-4023

1 (4) By Federal Express overnight delivery to AAECCL's prospective  
2 counsel, who filed a notice of non-appearance on AAECCL's behalf in this  
3 action on February 5, 2010 (Doc. 130):

4 Ken R. Ashworth  
5 Hans R. Baldau  
6 Geoffrey Potts  
7 Ken R. Ashworth & Associates  
8 1057 Whitney Ranch Drive, Suite 350  
9 Henderson, Nevada 89014

10 Dated this 20th day of April, 2011.

11 By: /s/PATRICIA FERRUGIA

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